

Message Text

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ACTION OPIC-06

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SUBJECT: OPIC REPRESENTATIVE'S CONVERSATIONS WITH BOLIVIAN OFFICIALS

1. OPIC COUNSEL LORIN WEISENFELD HAS JUST COMPLETED THREE DAYS OF TALKS WITH BOLIVIAN OFFICIALS REGARDING THE POSSIBILITY OF RE-ESTABLISHING PART OR ALL OF THE OPIC PROGRAM IN BOLIVIA. WEISENFELD VISITED BOLIVIA PREVIOUSLY IN AN ATTEMPT TO PERSUADE BOLIVIAN OFFICIALS THAT INSURANCE OF CONSTRUCTION CONTRACTORS BY OPIC IS NOT A MATTER REGULATED BY THE PROVISIONS OF DECISION 24 OF THE ANDEAN PACT. THE PRESENT TALKS WERE HELD AT THE REQUEST OF BOLIVIAN OFFICIALS, WHO ASKED THAT WEISENFELD COME TO BOLIVIA TO INFORM THEM ABOUT HIS CONVERSATIONS WITH LEGAL OFFICERS OF THE ANDEAN PACT IN LIMA REGARDING THE OPERATION OF OPIC'S PROGRAM AS A WHOLE WITHIN THE ANDEAN PACT. LOCAL OFFICIALS WERE ALSO ANXIOUS TO LEARN OF THE AGREEMENT, IF ANY, ALREADY REACHED BETWEEN OPIC AND ECUADOR ON THE QUESTION OF INSURANCE OF CONSTRUCTION CONTRACTORS AND ON THE LARGER ISSUES RAISED BY OPIC INSURANCE.

2. JURISDICTION OVER FOREIGN INVESTMENT MATTERS IS RELATIVELY DIFFUSE TO BOLIVIA. DISCUSSIONS RELATING TO OPIC HAVE

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GENERALLY INVOLVED THE NEED TO REACH A CONSENSUS AMONG INTERESTED GOVERNMENT AGENCIES. WEISENFELD MET SEPARATELY DURING THE COURSE OF HIS STAY WITH OFFICIALS OF THE PLANNING MINISTRY, THE FOREIGN MINISTRY, THE REGIONAL INTEGRATION OFFICE AND THE MINISTRY OF INDUSTRIES. IN ADDITION HE WAS INVITED TO ADDRESS THE NATIONAL PLANNING COUNCIL (CONEPLAN) ON THE SUBJECT OF OPIC'S PROGRAM. WEISENFELD WAS ACCOMPANIED TO SOME MEETINGS, INCLUDING HIS

TESTIMONY BEFORE CONEPLAN, BY EMBASSY POLITICAL/ECONOMIC COUNSELOR.

3. WEISENFELD FOUND NO SYMPATHY AMONG THE OFFICIALS WITH WHOM HE SPOKE FOR TREATING THE INSURANCE OF CONSTRUCTION CONTRACTORS SEPARATELY FROM THE INSURANCE OF EQUITY INVESTORS. WHILE HIS ARGUMENTS IN FAVOR OF IMMEDIATE APPROVAL OF CONSTRUCTION CONTRACTOR INSURANCE WERE NOT REJECTED, NO OFFICIAL WAS PREPARED TO ADVOCATE THAT OPIC BE AUTHORIZED TO ISSUE SUCH COVERAGE UNDER THE TERMS OF THE EXISTING INVESTMENT GUARANTY AGREEMENTS WITH THE UNITED STATES. RATHER, THE BOLIVIANS TOOK ADVANTAGE OF WEISENFELD'S PRESENCE TO URGE THAT BOTH SIDES ADDRESS THEMSELVES TO A REEXAMINATION OF THE INVESTMENT GUARANTY AGREEMENT AS A WHOLE. SUGGESTED RENEGOTIATION OF THE 1955 AND 1964 BILATERAL AGREEMENTS WAS A THEME THAT RECURRED REPEATEDLY DURING WEISENFELD'S TALKS.

4. IN THIS CONNECTION, LOCAL OFFICIALS ASKED TO BE INFORMED ABOUT THE CONVERSATIONS WEISENFELD HAS HELD FROM TIME TO TIME WITH OFFICIALS OF THE ANDEAN PACT IN LIMA REGARDING THE ISSUES RAISED BY ARTICLE 51 OF DECISION 54. WEISENFELD DESCRIBED OPIC'S POSITION ON SUBROGATION AND ARBITRATION. HE NOTED THAT OPIC'S VIEWS ON SUBROGATION APPEAR TO BE ACCEPTABLE TO THE LEGAL OFFICERS OF THE JUNTA IN LIMA, BUT THAT THESE OFFICIALS HAVE REJECTED THE SEVERAL ALTERNATIVES REGARDING ARBITRATION WHICH HAVE BEEN SUGGESTED BY WEISENFELD.

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5. WEISENFELD ENCOUNTERED A SIMILAR RESISTANCE TO THE OPIC POSITION ON ARBITRATION IN HIS MEETINGS HERE. WILLY VARGAS, THE SECRETARY GENERAL FOR INTEGRATION, WAS VOCIFEROUS IN HIS OPPOSITION TO ARBITRATION OF ANY SORT, AND EVEN GOVERNMENT OFFICIALS MORE SYMPATHETIC TO OPIC'S POSITION THAN VARGAS TOLD WEISENFELD THAT THEY WOULD OPPOSE THE EXISTENCE OF AN ARBITRATION CLAUSE IN ANY REVISED BILATERAL AGREEMENT WHICH THEY MIGHT PROPOSE IN AN EFFORT TO REESTABLISH THE OPIC PROGRAM. REASONS FOR OPPOSITION TO ARBITRATION INCLUDE THE FOLLOWING: (1) THE CLEAR PROHIBITION CONTAINED IN DECISION 24, (2) THE OFFENSIVE IMPLICATION THAT FOREIGN INVESTORS CANNOT RECEIVE A FAIR HEARING IN BOLIVIAN COURTS, AND (3) THE LACK OF SYMPATHY OF INTERNATIONAL ARBITRAL PANELS WITH THE ECONOMIC PROBLEMS OF DEVELOPING NATIONS.

6. FINALLY, WEISENFELD WAS ASKED REPEATEDLY ABOUT THE DEGREE TO WHICH AN UNDERSTANDING MIGHT HAVE BEEN REACHED WITH ECUADOR REGARDING THE REESTABLISHMENT OF ALL OR PART OF OPIC'S PROGRAM THERE. BOLIVIA IS CONSCIOUS OF THE UTILITY TO IT OF THE OPIC PROGRAM AND IS APPARENTLY CONCERNED THAT ECUADOR MIGHT HAVE MADE A SPECIAL ARRANGEMENT WITH OPIC. WEISENFELD EXPLAINED THAT HE

HAS LIMITED HIS TALKS IN QUITO THUS FAR TO A DISCUSSION OF THE CONSTRUCTION CONTRACTOR ISSUE.

7. WEISENFELD USED HIS BEST EFFORTS TO CONVINCE THE BOLIVIAN OFFICIALS WITH WHOM HE MET TO PERMIT OPIC TO ISSUE CONSTRUCTION INSURANCE CONTRACTS IMMEDIATELY AND TO CONSIDER PERMITTING THE ENTIRE OPIC PROGRAM TO RESUME OPERATION ON THE BASIS OF THE EXISTING BILATERAL AGREEMENT, OR A NEW ONE WHICH MIGHT BE PROPOSED, WHICH COULD CONTAIN ASSURANCES OF ARBITRATION. THESE EFFORTS ARE NOT LIKELY TO BE AVAILING. THE BOLIVIAN OFFICIALS ARE FIRMLY OPPOSED TO TREATING CONSTRUCTION CONTRACTORS DIFFERENTLY THAN EQUITY INVESTORS AND EVEN MORE STRONGLY OPPOSED TO ACCEPTING AN ARBITRATION CLAUSE OF ANY SORT.

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8. ALTHOUGH WEISENFELD WAS NOT SUCCESSFUL IN ACHIEVING HIS LIMITED OBJECTIVES, HE ENCOUNTERED STRONG INTEREST AMONG GOVERNMENT OFFICIALS IN REACHING AN AGREEMENT WITH OPIC. THESE OFFICIALS SAID THEY ARE CONSIDERING A FORMAL REQUEST TO THE USG TO RENEGOTIATE THE INVESTMENT GUARANTY AGREEMENT. THEY SAID SUCH A RENEGOTIATION WOULD TAKE ACCOUNT OF OPIC'S PROPOSAL TO DEAL WITH THE LANGUAGE OF ARTICLE 51 REGARDING SUBROGATION BUT THE GOB WOULD NOT BE ABLE TO AGREE TO AN ARBITRATION CLAUSE.

9. THE EMBASSY STRONGLY SUPPORTS THE RESUMPTION OF OPIC'S PROGRAM IN BOLIVIA. THERE IS TREMENDOUS NEED FOR CAPITAL INVESTMENT IN THIS COUNTRY AND, WHILE THE AVAILABILITY OF OPIC INSURANCE MAY NOT BE THE SINE QUA NON OF SUCH INVESTMENT, IT IS CERTAINLY AN IMPORTANT ELEMENT IN THE INVESTMENT CLIMATE. OPIC SHOULD BE COMMENDED FOR ITS EFFORTS TO REESTABLISH TITS PROGRAM WITHOUT YIELDING AN INCH, BUT IT IS CLEAR FROM THE GOB OFFICIALS' STATEMENT THAT BOLIVIA IS UNWILLING TO ACCEPT THE TRADITIONAL ARBITRATION CLAUSE AS A PRICE FOR REESTABLISHMENT OF OPIC ACTIVITIES.
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